Small Business Size Certification & Recertification

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What are the General Rules for Small Business Size Certification?

- For prime contracting purposes, size is established when a concern submits a written self-certification that it is small to the procuring activity as part of its initial offer which includes price. 13CFR121.404(a)
- For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. 13CFR121.404(e)

What are the General Rules for Small Business Size Certification? (cont'd)

- A concern that qualifies as small for the award of a contract, stays small for the life of the contract. 13CFR121.404(g)
- Where a concern grows to be other than small (large) during the life of the contract, the procuring agency may still exercise options and count the option award as an award to a small business. 13CFR121.404(g)

What are the New Rules Requiring Size Recertification?

- New rules will be written as exceptions that apply to 13 CFR 121.404(g).
- The effective date is June 30, 2007 and will apply to both new and existing solicitations and contracts.
- The new rules do not impose any recertification requirement at the subcontractor level.

What are the New Rules Requiring Size Recertification? (cont'd)

- The new rules will require size recertification for:
  - Contract novations
  - Mergers and acquisitions
  - Long term contracts (contracts longer than 5 years including options)

How will the New Rules Affect Novated Contracts?

- A contractor must recertify within 30 days of an approved contract novation.
- If the contractor cannot certify as small, the procuring agency can not count future options or orders against its small business goals

How will the New Rules Affect Mergers and Acquisitions?

- A contractor must recertify within 30 days of a merger or acquisition transaction becoming final.
- If the contractor cannot certify as small, the procuring agency can not count future options or orders against its small business goals; **and**
- All applicable Federal contract databases must be immediately revised to reflect the new size status.

How will the New Rules Affect Long Term Contracts?

- Contractors will be required to recertify their small business size status prior to the 6th year of performance & then prior to each option thereafter. The contracting officer must request recertification
  - no more than 120 days prior to the end of the fifth year of the contract, and
  - no more than 120 days prior to exercising any option thereafter

How will the New Rules Affect Long Term Contracts? (cont'd)

- The contracting officer's request for size recertification must include the NAICS code initially used for contract award, but use the size standard for that code in effect at the time of recertification.
- If the contractor cannot certify as small, the procuring agency can not count future options or orders against its small business goals.

How will the New Rules Affect Long Term Contracts? (cont'd)

- A contractor that was previously certified as a large business (either at contract award or on a previous option) may recertify as small at the exercise of a subsequent option, if it then meets the applicable size standard.

How will the New Rules Affect Long Term Contracts? (cont'd)

- Recertification of size does not in any way change the terms and conditions of the existing contract.
- Performance of work (limitations on subcontracting), non-manufacturer rule, subcontracting plan and other requirements in effect at contract award remain in effect for the life of the contract.

How will the New Rules Affect Orders Under Long Term Contracts?

- For each order the contracting officer must assign a NAICS code and size standard that corresponds to the code and size standard used for the original contract.
- A concern will be considered small for that order only if it certified itself as small under that NAICS code and size standard for the original contract.

How will the New Rules Affect Orders Under Long Term Contracts? (cont'd)

- The contracting officer may require that concerns recertify size status in response to a solicitation for an order.
- Size status in the above situation will be determined as of the date the concern submits its self certification in response to the solicitation for the order.

Lastly, What about BPA's?

- A Blanket Purchase Agreement (BPA) is not a contract.
- A concern's size is not determined when the BPA is created.
- Size will be determined for each individual contract issued under the BPA.